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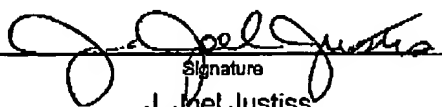
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**APR 03 2006**

PTO/SB/33 (07-05)

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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) <b>BANIK 2-73</b>	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>April 3, 2006</u> Signature <u>Debbie Sams</u> Typed or printed name <u>Debbie Sams</u>		Application Number <b>09/514,489</b>	Filed <b>February 29, 2000</b>
		First Named Inventor <b>Somnath Banik</b>	
		Art Unit <b>2684</b>	Examiner <b>Tu X. Nguyen</b>
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.  This request is being filed with a notice of appeal.  The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. <b>48,981</b> Registration number _____ <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		 Signature <b>J. Joel Justiss</b> Typed or printed name <b>972-480-8800</b> Telephone number <b>April 3, 2006</b> Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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ATTORNEY DOCKET NO. BANIK 2-73

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Somnath Banik, et al.

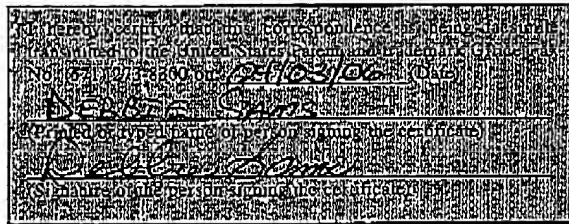
Serial No.: 09/514,489

Filed: February 29, 2000

For: SYSTEM AND METHOD FOR COMMUNICATING DATA  
OVER A RADIO FREQUENCY VOICE CHANNEL

Grp./A.U.: 2684

Examiner: Tu X. Nguyen

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

The Appellants have carefully considered this application in connection with the Examiner's Final Rejection mailed January 3, 2006, and respectfully request a pre-appeal brief review of this application in view of the following remarks.

**REMARKS/ARGUMENTS**

The Appellants originally submitted Claims 1-20 in the application. The Appellants amended Claims 1 and 8, canceled Claims 3 and 10 without prejudice or disclaimer and added Claims 21-22. After a previous appeal, the Examiner reopened prosecution. Presently, Claims 1-2, 4-9 and 11-22 are currently pending in the application.

**I. Rejection of Claims 1-2, 4-6, 8-9, 11-13, 15-19 and 22 under 35 U.S.C. §103**

The Examiner has rejected Claims 1-2, 4-6, 8-9, 11-13, 15-19 and 22 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,044,266 to Kato in view of U.S. Patent No. 5,960,357 to Kim. Kato and Kim both fail to teach or suggest identifying a pause in voice traffic that is to be transmitted over a voice channel and responding to the pause by causing a base station transmitter to transmit data to a cordless telephone receiver over the voice channel as recited in independent Claims 1, 8 and 15.

Kato discloses a mobile packet data station b that monitors a voice path between a mobile voice station c and a base station to identify silent periods in the voice path. During the silent periods, the mobile packet data station transmits data therefrom to the base station. (See the Abstract; column 4, lines 6-26; and Figure 1.) Kato, therefore, teaches the mobile packet data station transmits data to the base station but does not teach or suggest the base station transmits data to the mobile voice station. This is clearly evident from Figure 1 of Kato that illustrates the packet transmission path f going from the mobile packet data station to the base station. (See column 4, lines 20-26.) The schematic timing diagrams of Kato also indicate that data packets are transmitted from the mobile packet data station to the base station. (See Figures 6B, 7B and 8B.) Kato provides no teaching or suggestion that data is transmitted from the base station to the mobile voice station.

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Even when voice bursts do occur between the mobile voice station and the base station, the mobile packet data station will look for another channel to transmit data packets to the base station. (See column 3, lines 4-10.)

The Examiner points to the second embodiment of Kato to indicate that the present invention can also be used on cordless telephone that does not have Voice-Operated Transmission (VOX) control. (See Advisory Action citing column 8, lines 40-45 and column 9, lines 35-36 of Kato.) The second embodiment differs from the first embodiment of Kato by being usable with a base station that does not use VOX control since the second embodiment adjusts a base station so that it can perform VOX control. (See column 8, lines 36-45 and column 9, lines 35-38.) Regardless, the second embodiment of Kato still teaches the mobile packet data station transmits data to the base station during silent periods. (See column 8, lines 45-46; column 9, lines 24-35; column 10, lines 2-20; and Figure 7B.) As such, Kato does not teach or suggest identifying a pause in voice traffic that is to be transmitted over the voice channel and responding to the pause by causing a base station transmitter to transmit data to a cordless telephone receiver over the voice channel as recited in independent Claims 1, 8 and 15. Thus, Kato fails to teach or suggest each element of independent Claims 1, 8 and 15.

Kim has not been cited to cure the above deficiencies of Kato but has been relied upon to teach a silence detector coupled to a transmitter. (See Examiner's Final Rejection, pages 3-4.) Additionally, Kim does not cure the above deficiencies of Kato but instead is directed to executing an automatic calling function in a cordless telephone system including a fixed base station and a flip-type remote handset. (See column 1, lines 15-19.) The Applicants do not find any teaching or suggestion where Kim discloses the fixed based station transmits data to the flip-type remote handset

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in response to an identified pause in voice traffic therebetween. As such, the cited combination of Kato and Kim does not teach each and every element of independent Claims 1, 8 and 15.

Since the cited combination of Kato and Kim does not teach or suggest all of the elements of independent Claims 1, 8 and 15, the cited combination does not establish a *prima facie* case of obviousness of independent Claims 1, 8 and 15 and Claims dependent thereon. Thus, Claims 1-2, 4-6, 8-9, 11-13, 15-19 and 22 are not unpatentable in view of Kato and Kim. Accordingly, the Appellants respectfully request the Review Panel to remove the §103(a) rejection of Claims 1-2, 4-6, 8-9, 11-13, 15-19 and 22 and issue allowance thereof.


## II. Conclusion

In view of the foregoing remarks, the Appellant sees all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicits a Notice of Allowance for Claims 1-2, 4-9 and 11-22.

The Applicant requests the Reviewers to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application.

Respectfully submitted,

HITT GAINES, PC

  
J. Joel Justiss  
Registration No. 48,981

Dated: 4/3/06

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